

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, February 15, 2006, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Dick Esseks, Lynn Sunderman and Tommy Taylor (Gerry Krieser, Roger Larson and Mary Strand absent); Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Greg Czaplewski, Tom Cajka, Joe Rexwinkle, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held February 1, 2006. Motion for approval made by Taylor, seconded by Carroll and carried 5-0: Carlson, Carroll, Esseks, Sunderman and Taylor voting 'yes'; Krieser, Larson and Strand absent (Pearson resigned effective February 1, 2006).

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

February 15, 2006

Members present: Carlson, Carroll, Esseks, Sunderman and Taylor; Krieser, Larson and Strand absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06004, CHANGE OF ZONE NO. 06005, CHANGE OF ZONE NO. 06006, SPECIAL PERMIT NO. 06003, SPECIAL PERMIT NO. 06005 and USE PERMIT NO. 108A.**

Ex Parte Communications: None.

Taylor moved to approve the Consent Agenda, seconded by Carroll and carried 5-0: Carlson, Carroll, Esseks, Sunderman and Taylor voting 'yes'; Krieser, Larson and Strand absent.

Note: This is final action on Special Permit No. 06003 and Special Permit No. 06005, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 05082
FROM R-6 RESIDENTIAL TO B-3 COMMERCIAL
ON PROPERTY GENERALLY LOCATED
AT SOUTH 21ST AND K STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 15, 2006

Members present: Esseks, Sunderman, Carroll, Taylor and Carlson; Krieser, Strand and Larson absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Additional information submitted for the record: Greg Czaplewski of Planning staff submitted seven additional letters in support of this change of zone request.

Proponents

1. Tony Hillhouse, 1200 Garden, Bennet, NE, 68317, testified in support on behalf of the applicant, Glen Hillhouse, who is his close personal friend and his father. Hillhouse is an officer and active employee in the family business being displaced by the Antelope Valley project. He does not question the need for Antelope Valley but his father wishes to continue the 45-year history of customer service in the Downtown area. His father purchased the shop at 21st & P in 1965 at the age of 21. He had determination, drive and work ethic. Glen Hillhouse is reliable and trustworthy. He dreamed of a modern facility with an all-glass front and eventually paid it off. He is setting out to build another modern state-of-the-art facility. The move to the 21st & K location will enable the company to continue to provide employment for eight employees and their families, and provide a much needed service in the Downtown area. The applicant needs and wants to stay Downtown.

Hillhouse read a letter into the record written by the neighbor directly south of 21st & K:

I believe this type of construction and development is needed in this neighborhood. There has been very little new construction in this area and I believe this will jump-start this neighborhood.

This neighbor is welcoming Glen's Body Shop with open arms. Glen Hillhouse has a track record of operating a clean, modern facility.

Esseks inquired as to the height of the building. Hillhouse indicated it would be 14'.

2. Allen Hillhouse, officer and manager at Glen's Body Shop, testified in support. The business has been tracking its customers for 25 years, who always come from zip codes 68506, 68510, and 68516. 30,000 people work in Downtown Lincoln. These services will

continue to be an important need in this area. The new shop located just out of the heart of Downtown will continue to fill the large need for transportation support services.

3. Laura Bell, 3721 Timberline Court, 68506, a commercial real estate broker for Commercial Realty Group, testified in support. She has worked with Glen's Body Shop for five years, ever since Antelope Valley began notifying parties that they need to relocate. Mr. Hillhouse has built a very successful and reputable business. They do excellent work and have excellent customer service, running a very clean shop. They wish to stay in the general vicinity of their 21st & P Street location because this is where they have built their business for 40 years. The proposed site is vacant ground currently in need of redevelopment. Time is running out to find a new location. They have been unable to find any other alternative sites. They have considered and inquired about properties on the market as well as properties not on the market. Over the course of time they have investigated over 35 properties besides 21st and K.

4. Bruce Bailey, Design Associates, 1609 N Street, submitted a rendering of the proposed facility. He pointed out that Glen's Body Shop was located along side a neighborhood previously and he is moving into a neighborhood. The applicant understands the importance of the K Street corridor. They have focused on the aesthetics and have tried to make it an attractive structure, within the guidelines of how a corridor entrance should look. The shop backs onto P Street now. In the new facility, cars will not be allowed to back into the street. They have brought the vehicles inside and have enclosed the other cars into a structure in back of the lot with landscaping. All of the parking is landscaped as well.

Esseks asked where they would store the badly damaged cars which will take time for the parts to arrive. Bailey explained that there will be an outdoor enclosed structure so that you would not see those cars coming in off the alley nor from K Street nor from either side. It is both landscaped and a 6' opaque fence.

Carroll noted that Public Works does not want there to be access off K Street. How does that affect the project? Bailey explained that they have a one-way in, not out. He believes that taking access off of K would be convenient and critical to any business. The existing zoning would allow 5 lots and 5 homes to all have access off K. They are showing one driveway for entrance only. There will be no exit on K Street, but rather through the alley to 21st Street. The employee parking has access off K Street. Instead of five driveways that could have access under the R-6 zoning, they are asking for only one entrance for customers and an access for employee parking.

Carroll inquired whether the applicant considered anything more linear long K Street, with everything behind the building so that it would be hidden from K Street. Bailey explained

that because of the way the body shop functions where everything is put into the back, the linear design did not work. They are showing more landscaping and by doing some different level treatments of the roof line, they have created a more interesting structure.

5. Glen Hillhouse, 2020 Surfside, the applicant, pointed out that Antelope Valley has created and forced many changes, and many of the changes in this area will be welcome. The area is referred to as the entryway/corridor to downtown and in view of the Capitol. The Comprehensive Plan suggests that commercial districts shall be so located and so formed that they enhance the entryway and/or corridors when developing adjacent to these corridors. His plan is to enhance this area, to bring up the tax base, and continue to be a good citizen and reputable servant to his customers. The Capitol Environs Commission voted in favor of this application.

6. Mark Hunzeker appeared on behalf of the applicant. The site at 21st and K is surrounded by commercial on the north and south, parking lots and high density multi-family housing to the east and west, and somewhat also to the south. The Antelope Valley plan (which is the real reason for this application) calls for this area to be mixed use. The B-3 district is the definition of mixed use. It allows for a wide variety of commercial uses, including body shops as a conditional use, and it also provides for relatively high density housing. Therefore, by definition, the City Council at some point in time had determined that residential uses above the first floor are compatible with the uses listed in the B-3 district. This is an ideal mixed use situation and Hunzeker believes that this is a use that is compatible with both the Antelope Valley and Downtown Master Plans. Granted, the Downtown Master Plan makes reference to low rise office and colors this area a slightly different color than the Antelope Valley plan, but remember, both of those plans cover very large areas, and this is a relatively small parcel at the very, very fringe of both of those plan areas. One might say it is located at the exit to Downtown Lincoln, or at least one of the major exits, as opposed to entrance. This is an eastbound one-way that takes you out of Downtown and this property is at the very end of that area.

Hunzeker agreed that planning is a very important tool and it is necessary. He also agreed that both the Antelope Valley plan and the Downtown Master Plan are important to this community, but remember, they have to be executed one parcel at a time. Glen Hillhouse has been forcibly removed from his present location. The city now owns his building. He must move and he must move soon. He has been looking for a long time. In fact, he has been rebuffed by the city relative to potential locations which were within the Antelope Valley plan area at both the southeast and northwest corners of 21st & N. It is incumbent upon the city to do whatever it can to facilitate that relocation. This site is compatible. There are many letters in support, including next door neighbors.

Hunzeker showed photographs of the area and reminded the Commission that the vista is not particularly attractive as it exists today. This use will be an improvement to this area. It is a necessary kind of thing for Mr. Hillhouse to be able to remain in business in and near the downtown.

The building will have a glass overhead door leading into the estimate area; there will be windows all along the K Street side.

Esseks inquired as to the height of the western part of the facility. Hunzeker indicated that it is a 14' wall.

Carroll inquired as to the action by the Nebraska Capitol Environs Commission (NCEC). Hunzeker stated that the NCEC has not reviewed the design of the building; however, the applicant is willing to bind himself to this design or any other design approved by the NCEC, and to additional conditions which may impose some limitations on the use of the property. The NCEC vote was to recommend approval of the change of zone on the east 250' of the site – not the entire half block. The change of zone request is for the entire half block. This site plan is all the applicant is attempting to develop today, and the applicant is comfortable with the recommendation to change the zone on only the east 250', if that's what it takes. The applicant has no option but to go back to the NCEC to get approval of the design before getting a building permit.

Sunderman inquired about the traffic impact of a low rise office use versus the proposed auto body shop use. Depending on the tenant in the office building, Hunzeker believes there could be way more traffic in the office building or about the same amount of traffic. The auto body shop does not generate very much traffic. The proposed building is relatively larger than what Mr. Hillhouse has today, but it is not going to be so large that it is going to generate a lot of traffic. They have eight employees. The applicant does have some concerns about access to the site, but that is not what they are here about today. The zoning does not resolve the access question. They will still have to work with the Public Works Department on the access issue, but Hunzeker believes the applicant is entitled to some access to K Street. The applicant is willing to work the access issue out with the Public Works Department.

There was no testimony in opposition.

Staff questions

Taylor asked whether staff has any concerns in terms of the traffic and access. Dennis Bartels of Public Works stated that there was a potential site plan submitted with the change of zone application but there is nothing that binds them to that site plan. Bartels indicated that he was just pointing out that at first glance, he would be concerned about two additional driveways on K Street, which is an arterial street. The access should come off the side street. He is not so concerned about the use, but the driveways, because once the driveway is there, the use could change and it is hard to ask that the driveway go away if the use changes. The option is to try to get the access off of the local street as opposed to the arterial street, especially here where it is approaching a signalized intersection. He was not objecting to the land use, but the potential site plan which was not really part of the application.

Taylor inquired whether there are any exceptions in place today as far as access onto an arterial street. Bartels suggested that it usually happens when a piece of property is being redeveloped where there were existing driveways or existing building. Bartels could not say it has never been approved, but when starting fresh, he would like to have the site plan and access designed the way the textbook says it should be designed. It might be a lot safer to keep the access points off of the arterial. Other than philosophically, the applicant did not ask for Public Works' opinion before they prepared the site plan. Public Works only saw an undimensioned site plan that came with the change of zone application. He agreed that Public Works can work with them on redesigning the building to make the access work differently.

Carroll asked for the Planning staff opinion as to restricting the use on the B-3 zoning. Czaplewski stated in the past, the city has not always been interested in doing a conditional zoning agreement.

Carroll inquired whether the site plan meets the setback requirements of B-3 zoning. Czaplewski stated that it would depend on where the zoning changes. If the property is left residential, they will have a 30' setback, so the storage will have to be moved back 30' from the property line. As it is laid out now, with the entire property going to B-3, it does meet the setback.

Marvin Krout, Director of Planning, offered that conditional zoning is something that has been discussed previously. It is something that the Law Departments believes can be done legally, and the staff has talked about putting this tool in the zoning code. However, there has not been a successful conditional zoning that has made it through to approval, but it is something that can be done. We need to deal with redevelopment in the inner city in some manner.

Krout also advised that there are three requests for B-3 zoning coming up on the Planning Commission's March 15th agenda, and there is a need for a tool that allows more discrimination than what is permitted in the B-3 zoning by right so that we can get quality development in older areas. Krout does not want to discourage using it as a tool. Hopefully, there can be something put in the ordinance that makes it more a part of the regular process. In the meantime, he would suggest that it is probably appropriate to allow other uses than just this particular use. There are other uses in the B-3 district that would be acceptable uses and compatible with the Downtown and Antelope Valley plans. Once you have accepted an auto body shop at this location, it makes you wonder what uses you don't want to see, e.g. vehicle sales lot. Probably this is more attractive than a vehicle sales lot. Krout suggested that the staff could probably work with the applicant to come up with some prohibitive uses, but he believes it appropriate to leave the range of uses.

Esseks wondered about a special use permit. Krout advised that if the B-3 zoning provided that the auto body shop was a special permitted use instead of a conditional use, then yes, you could require a special permit. But, we also do not want to create more special

permitted uses. We are trying to reduce those over time and not have individual reviews every time someone wants to change the use. Maybe we need to determine whether we want auto body shops in the B-3.

Esseks would like to invoke the Zucker report. This business needs to relocate quickly. It is unfair to impose any further time restraints. How can we phrase a resolution which would allow these folks to relocate and still allow the flexibility that we don't limit this just to a particular enterprise? Krout suggested that if the Planning Commission directed the staff to meet with the applicant before the City Council hearing and draft a set of conditions (like what was done for the U-Stop/McDonalds, which was denied), the staff could do that. We can count on the NCEC to deal with the architectural issues. The Commission could approve the B-3 zoning with direction to staff to prepare an agreement prior to City Council.

Carlson referred to the Antelope Valley Plan and the Downtown Master Plan. Is the Antelope Valley Plan intended to create new overlay districts – new CUP tools? He is concerned about creating new zoning on the fly. Krout stated that both the Downtown Master Plan and the Antelope Valley Plan do call for special design guidelines and some sort of overlay. On this proposal, the staff has determined that it was the basic incompatibility between the pedestrian oriented user close to Downtown versus this particular use. Krout advised that the staff is working first on developing the Downtown guidelines, and the Antelope Valley guidelines will follow.

Carlson inquired about relocation assistance. What has been done in order to help this applicant search for a new location? Krout advised that they wanted to narrow their search to the immediate Downtown area because of their tradition of being located in the Downtown, and they thought that important to the business.

Response by the Applicant

Hunzeker clarified that to the extent that this change of zone is approved, the applicant would request the change of zone on the east 280' to implement the 30' setback. The applicant would need to meet with staff. The letter submitted with the application offered to discuss this with the staff and to discuss any proposed restrictions on use. That offer was not taken up at that point, but the applicant is still open to doing that. The applicant is willing to agree on a set of conditions that would restrict uses and/or the site plan. Hunzeker believes it is highly likely that they could reach an agreement with Public Works on the access issue. The applicant is very willing to do what is necessary to make this a compatible use within this area. This project will make an improvement to the streetscape along K Street.

Hunzeker reiterated that the change of zone on the east 280' would be acceptable. If the zoning is changed on less than the full block, they pick up a front yard setback that matches the residential setback, and he thinks they probably already have that. He is

comfortable with the idea of not zoning the entire half block and working out an agreement relative to both the uses and the site plan.

ACTION BY PLANNING COMMISSION:

February 15, 2006

Taylor moved approval of the change of zone on the east 280', conditioned upon an agreement being reached between the applicant and staff on the site plan and access issue prior to scheduling on the City Council agenda, seconded by Esseks.

Esseks made a motion to amend to require that the architectural design be approved by the Nebraska Capitol Environs Commission. Taylor agreed to this as a friendly amendment.

Taylor noted that the Commission action on the U-Stop gas station at this location was fairly close, but the primary concern was the traffic, especially the student traffic from Lincoln High to that facility. In comparison, he believes that the traffic for this use is going to be minimal. He likes the site plan as shown. He believes the mitigation to make this look attractive will be accomplished.

Carroll stated that he will vote in favor. It is important to keep a business owner in an area where they desire. The NCEC overlooking the design of the building is a plus for the community, and if the staff and the applicant can work out the site plan problems, he believes it will be a fine establishment and good for the Downtown.

Esseks commented that it is a low rise building, and if we are trying to achieve a truly quality development in an area like the Downtown, conditional zoning may prove to be a necessary tool.

Sunderman believes that the applicant will build a very nice building; but more importantly, the applicant has demonstrated that it will begin nice and will remain that way.

Carlson stated that he agrees with everything that has been said about the applicant and the plans do look workable and attractive. This applicant has been impacted negatively by Antelope Valley so the city has a responsibility to try to provide some accommodation, but Carlson believes that needs to happen through the work of Urban Development and the Mayor's office. He is not comfortable creating a new zoning district to accommodate someone impacted by Antelope Valley. He does not think that should occur in this forum. This is a straight zoning change. The staff has recommended denial and he supports the reasons for that.

Motion for approval of the change of zone on the east 280', conditioned upon an agreement being reached between the applicant and staff on the site plan and access issue prior to scheduling on the City Council agenda, and conditioned upon approval of the architectural design by the Nebraska Capitol Environs Commission, failed 4-1: Esseks, Sunderman,

Carroll and Taylor voting 'yes'; Carlson voting 'no'; Krieser, Strand and Larson absent.

Due to insufficient votes for the motion to carry, this application was held over for continued public hearing and action on March 1, 2006.

At this point in the meeting, Carlson invited the Mayor to come forward. Mayor Coleen Seng then called Melinda Pearson forward and presented a plaque to Pearson for her years of service on the Planning Commission from 2003-2006.

Carlson also expressed appreciation for Melinda's hard work and diligence.

COUNTY CHANGE OF ZONE NO. 06003,
FROM AG AGRICULTURAL DISTRICT TO
AGR AGRICULTURAL RESIDENTIAL DISTRICT
and
COUNTY PRELIMINARY PLAT NO. 06001,
THE PRESERVE AT CROSS CREEK 2ND ADDITION,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 58TH STREET AND ROCA ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 15, 2006

Members present: Esseks, Sunderman, Carroll, Taylor and Carlson; Krieser, Strand and Larson absent.

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a written request for deferral until March 29, 2006.

Additional information submitted for the record: Mike DeKalb of Planning staff submitted a letter in opposition from Bruce Kuster.

Carroll moved to defer, with continued public hearing and action scheduled for March 29, 2006, seconded by Esseks and carried 5-0: Esseks, Sunderman, Carroll, Carlson and Taylor voting 'yes'; Krieser, Strand and Larson absent.

There was no public testimony.

COUNTY SPECIAL PERMIT NO. 06002
TO ALLOW THE TEMPORARY PLACEMENT
OF A MOBILE HOME ON PROPERTY GENERALLY
LOCATED AT S.W. 14TH STREET AND PRINCETON ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 15, 2006

Members present: Esseks, Sunderman, Carroll, Taylor and Carlson; Krieser, Strand and Larson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None

Proponents

1. Ron Schuster, 1905 W. Princeton Road, Martell, NE 68404, the applicant, presented this request for a special permit to allow his sister to live on the farm the remainder of her life. He does not know how much longer she has. She raised him and he believes it is his turn to take care of her.

Schuster understands that there are concerns about how his property looks. He is disabled and they went through the Hallam tornado. However, his son has returned home to help and they have been cleaning up the property. He has gotten rid of 11 junk cars and has four more for sale. There was an old mobile home sitting on the lot used for storage; however, it was removed yesterday. They will continue to clean up the property. He allowed the Hallam tornado rubble to be buried on his property. In the spring, he will be asking for a permit from the Hallam Rural Fire Department to burn the barn and he will have it buried there, so that will also be cleaned up. They are working very hard to get the yard cleaned up.

Esseks commented that it is encouraging to know that the other mobile home has been removed and that the applicant does plan to deal with the dilapidated barn.

2. Robert Mulder, 1905 W. Princeton Road, Martell, NE, the applicant's son, testified in support. He acknowledged that he has just moved back home and is helping to clean up the property. He confirmed that they have gotten rid of a lot of the old cars. There are a lot of blown down trees and he is working on splitting it into fire wood. He assured that the barn will be gone.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

February 15, 2006

Taylor moved to approve the staff recommendation of conditional approval, seconded by Carroll.

Carlson noted that it is a one-year permit.

Motion for conditional approval carried 5-0: Esseks, Sunderman, Carroll, Taylor and Carlson voting 'yes'; Krieser, Strand and Larson absent. This is a recommendation to the Lancaster County Board.

SPECIAL PERMIT NO. 06004
FOR AN EARLY CHILDHOOD CARE FACILITY
ON PROPERTY GENERALLY LOCATED
AT NO. 73RD STREET AND LOGAN AVENUE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 15, 2006

Members present: Esseks, Sunderman, Carroll, Taylor and Carlson; Krieser, Strand and Larson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None

Proponents

1. **Cheryl Rhoades**, 5744 Morrill Avenue, and her sister, **Patricia Moore**, 307 N. 56th Street, presented the request for a special permit to operate an early childhood day care facility at No. 73rd Street and Logan Avenue. They have agreed to reduce the number of children to 10 in order to meet the parking requirements.

There was no testimony in opposition.

Greg Czaplewski of Planning staff confirmed that the applicants have changed the request from 12 to 10 children and by doing so the site plan is acceptable. They could come back for additional children in the future if they can make changes to meet the parking requirements.

ACTION BY PLANNING COMMISSION:

February 15, 2006

Carroll moved to approve the staff recommendation of conditional approval for 10 children, seconded by Esseks and carried 5-0: Esseks, Sunderman, Carroll, Taylor and Carlson voting 'yes'; Krieser, Strand and Larson absent. This is final action unless appealed to the City Council.

WAIVER NO. 06001

**TO WAIVE THE REQUIREMENT TO DEDICATE
ADDITIONAL RIGHT-OF-WAY, AND TO WAIVE
PAVING, SIDEWALKS, STREET LIGHTS AND STREET TREES,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 70TH STREET AND SHAMROCK ROAD.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 15, 2006

Members present: Esseks, Sunderman, Carroll, Taylor and Carlson; Krieser, Strand and Larson absent.

Staff recommendation: Denial.

Ex Parte Communications: None

Proponents

1. Mark Hunzeker appeared on behalf of Howard Richoux, who purchased Lots 2, 3 and 4 of this proposed subdivision from one of the other owners, Mr. Waterbury, in 1985. This subdivision was approved in 1985, conditioned upon there actually be a plat filed within a year of approval of that subdivision. The primary reason for that condition being imposed was that at that time, Planning and Public Works were looking at the city subdivision regulations and saying that there needs to be a connection from this subdivision to the subdivision to the south, which is Park Crest Drive. At that time, Park Crest Drive stopped at a certain point, but the idea was that Park Crest Drive would continue at least far enough to cul-de-sac and encompass that area abutting South 70th Street and that there would be a street that would connect Shamrock Road to Park Crest Drive. Park Crest Drive has since been cul-de-sac'd and the area east has been developed as a commercial area and there will never be a road running south from Shamrock Road to meet up with Park Crest Drive.

Hunzeker went on to explain that this issue came up when Richoux sold the property last summer and it was discovered by the title company that there was a problem in that the plat that was required when the previous subdivision was approved had not been filed. So we now have two houses on two of the lots in this subdivision, both with unclear titles, and two other lots which are occupied by a tennis court and flower garden area. In response to the initial application for subdivision, the staff responded, requiring the paving of the

street, dedication of right-of-way, building a cul-de-sac, planting street trees, building sidewalks, etc. In addition, Hunzeker pointed out that since this four lot subdivision was approved in 1985, another subdivision was approved on the north side of Shamrock Road, which also waived the paving, sidewalks, street trees and all the other waiver requests. Thus, once in 1985 and at least once since 1985, the city has waived all of these requirements, and this application has come forward because the first time the waivers were approved, it was conditioned upon there being a plat filed within a year. The applicant has no alternative but to ask that the Planning Commission recommend once again that those requirements be waived because it is virtually impossible for these owners to dedicate all of the right-of-way required, pave the street by themselves, and do all the other things required in a subdivision like this and meet all city requirements because they do not have the capability to do so.

The applicant is requesting that the same waivers that have been approved twice before be approved for this subdivision to allow the applicant to move on with the sale of the property.

As far as the suggestion that the applicant enter into a community unit plan and vacate the street, Hunzeker noted that the Commission has received a communication that there are at least four or five of the neighbors willing to do that. However, for at least 200' west of South 70th Street, or more, the two property owners on both sides have not agreed to vacate the street and enter into any sort of community unit plan. There would be at least the first 300-400' of Shamrock Road from 70th Street west as a public road, regardless of what happened with the property to the west.

Esseks is concerned about having public roads within the city that are not paved. That is a bad standard that approval of this request would endorse. Hunzeker indicated that he would understand this concern if they were creating a new road, but this is not a new road. It has been around for at least 20 years, probably longer. It is a road that these folks like and they like it the way it is. Even under the staff's suggested alternative of vacating the street and doing a community unit plan, they are offering to waive these same standards and leave the road exactly the way it is. What the staff is recommending would not change it into a paved road. The maintenance is now being done by the property owners. Only by mistake does the city send a snowplow down this road.

Esseks commented that to be an inappropriate situation and the city believes it would have to take over full maintenance of an unpaved road. Hunzeker reiterated that there are at least the first few hundred feet of property owners who object to the concept of vacating the road and assuming obligation for maintenance of Shamrock Road. Hunzeker does not know whether they could get all the property owners to agree on a set of covenants. Not only would they have to have 100% of the property owners sign the petition to vacate the street, they would also have to have 100% agreement on a set of covenants which would obligate each of them to contribute to the maintenance plus paying for any insurance and other maintenance. Esseks suggested that maybe that effort should be made since the

owners are currently maintaining the road. Formalizing that might not be a problem. Hunzeker stated that that effort has been made. There were meetings of the homeowners, and at least one of those homeowners who is critical to the street vacation vocally opposed. Without 100% agreement of all the property owners, this problem cannot be fixed privately, and it won't change the standard of the roadway one way or the other. Hunzeker has very low level of confidence that it is possible to fix it privately. They have tried and that is why they are here. His client has sold the property and has moved out of town and is waiting to close on the house that he sold back in July. This needs to be resolved. He agreed that it is not a good example of how to do things, but occasionally sins of the past reassert themselves and we have to fix mistakes.

Carlson inquired whether Hunzeker's clients could assume the responsibility on behalf of the owners who do not want to participate. Hunzeker indicated that the street cannot be vacated without 100% of all the property owners that have access to the street. He believes that the staff has indicated if they could get 100% of those west of the two property owners closest to 70th Street, they might be able to vacate it from there on, but even that would be a highly unusual situation. Carlson noted that it is a substandard street. We do have acreage areas in the city where we have allowed such standards, but it seems like the process of further subdivision requires them to come up to standard.

Opposition

1. Bill Austin appeared on behalf of a number of property owners within the area of Shamrock Road, west of 70th Street, who are in opposition to the request for waivers and believe that denial is appropriate.

Austin pointed out that the Shamrock Road neighborhood in this location is very unusual. It has a single country lane that serves seven houses. There are no sidewalks or street trees. It is not a paved road. The neighbors like it that way and would like to keep it that way. Why are they not in favor of the waivers? The reason is that they believe that this is not the appropriate approach. It is a haphazard ex parte approach that does not actually serve the greatest benefit of the neighborhood. It is time to confirm the character of this neighborhood as an urban/rural subdivision within the city. His clients believe that the appropriate way to do that is through the development of a community unit plan that would serve the needs of everyone in this area. It would provide and take care of a number of problems. The CUP would allow the subdivision; the vacation of the road could be accomplished with conversion to a private roadway serviced and maintained by the neighborhood; and we would know that this area would remain a large lot development and maintain the character that the neighbors have come to love.

Austin noted that there was an attempt made to develop the community unit plan. A couple of neighborhood meetings were held and concerns were raised. Austin submitted petitions from four of the five neighbors to the west, leaving out the two owners to whom Mr. Hunzeker made reference. He does not know whether they would be in favor or opposed

to a community unit plan or in vacation of the street. The CUP would take care of the subdivision issue, the character of the neighborhood issue, and the concerns raised by the city regarding the street. The four owners who have submitted the petitions, along with the Richoux property, would represent all that would be needed for a limited CUP in the area. It is something that he believes the staff would look upon with reasonable favor.

With regard to the issue of the title as to whether or not there is a burning issue that needs to be addressed requiring the waivers at this time, Austin advised that he first became involved last August and he asked why it is a subdivision that is needed at all. There has been transfer of deeds older than 5 years, which should take care of the idea of splitting Lot 1 from the remainder of Lots 2, 3 and 4. There is a state statute that provides that if a deed is on file more than 5 years which has subdivided property without benefit of subdivision approval, the title is valid. He also understands that the prospective purchaser would like to have three separate lots at the time of closing. That is a different issue as to whether he can obtain valid title to the overall piece of property. The tennis court is an accessory use located on a separate lot.

Austin suggested that the character of the neighborhood should be maintained by the use of a community unit plan.

Staff questions

Esseks asked whether the city would be at an advantage if the CUP were created only for the area to the west. Would there still be a public benefit if there were a CUP on the limited amount of Shamrock Road? Brian Will of Planning staff responded that the best of all circumstances would be a community unit plan from 70th Street west. If that is not feasible, staff would also support a CUP dropping off the two lots adjacent to 70th Street. Esseks asked what advantage that would be to the city, community and tax payers. Will stated that the staff has concerns with continued maintenance and potential liability associated with maintaining that sub-standard road. A CUP over a portion would at least relieve the city of partial responsibility for that road. A CUP would also solve the seller's problem. The final plat noted that there were two options, either waiver of the subdivision requirements or a CUP, which is also another avenue to waive those requirements. The CUP would allow the final plat to move forward.

Carlson asked whether the petitions submitted today are enough. Will stated that the owners involved need to come forward with an application for a CUP. Carlson hears that there are owners that will object to the vacation and CUP. Are the four petitions submitted today enough? Will had not seen the petitions, but vacating the roadway does require 100% of the abutting property owners. The staff is not in receipt of any petitions to vacate the road.

Response by the Applicant

Hunzeker disagreed that this is “a haphazard ex parte approach”. It has certainly not been ex parte. Everyone has had plenty of notice. One of the people signing in favor of the CUP also signed a petition in opposition in December. The buyer of this property is not interested in becoming obligated for ongoing maintenance of that road. Hunzeker has a very, very low level of confidence that they will be able to get everyone to sign off on everything that is going to be necessary. If the concern is that we want this area to remain as it is, and remain in large lots and not 9,000 square feet as allowed under R-1, that is what this application is proposing. This proposes acre size lots just like the ones approved on the north side of the street. There is about 600 feet of frontage that won’t be vacated so you’ve got the problem of having the sub-standard road maintained by the city for almost as much frontage as you would have under a CUP. And all of the same waivers being requested here would have to be approved with a CUP. His client has demonstrated good faith to try to work this out. This application was made because after the meeting that they had in December, it was very clear that they would not be able to get a CUP put together and get everyone to agree on the covenants. They have spent another six weeks waiting to close on this sale. Hunzeker assured that his client would continue to work with the neighbors and if they can get something worked out between now and the City Council hearing, they may still come back with a CUP.

Esseks wondered whether the 9,000 sq. ft. lots could be prevented under a CUP. Hunzeker suggested that the CUP is no more binding. If the city approves a subdivision of these lots, they can’t get any smaller without another subdivision approval and this same discussion of waiving the requirements. If the four lots subdivided in 1985 are allowed to stay the way they are, those are fixed and cannot change without another subdivision being approved.

Esseks believes the covenants could provide nice deed restrictions. Hunzeker suggested that covenants are difficult to enforce.

ACTION BY PLANNING COMMISSION:

February 15, 2006

Carroll moved to deny, seconded by Esseks.

Carroll commented that it is a bad situation now and he does not think waiving the standards is going to make it any better. He agrees that the CUP route is the way to go.

Carlson stated that he empathizes with the current ownership, but he does not get the sense that there has been a city body that has recommended that subdivision occur and that the street stay the way it is.

Motion to deny carried 5-0: Esseks, Sunderman, Carroll, Taylor and Carlson voting ‘yes’; Larson, Strand and Krieser absent. This is a recommendation to the City Council.

ANNEXATION NO. 04012;
CHANGE OF ZONE NO. 04079
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL
AND R-5 RESIDENTIAL;
and
PRELIMINARY PLAT NO. 04030,
JENSEN PARK ESTATES,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 84TH STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 15, 2006

Members present: Esseks, Sunderman, Carroll, Taylor and Carlson; Krieser, Strand and Larson absent.

Staff recommendation: Approval of the annexation, subject to an Annexation Agreement; approval of the change of zone; and conditional approval of the preliminary plat.

Ex Parte Communications: None

Proponents

1. Jason Thiellen of Engineering Design Consultants, appeared on behalf of **Jensen Park LLC**, the applicant for this preliminary plat of 145 attached single family lots together with a request for annexation and change of zone from AG to R-3 and R-5 Residential.

Thiellen submitted a request to amend the conditions of approval as follows:

- ~~1.1.1 Show a street connection to Lot 111, unless the subdivider's waiver request is approved by the City Council. We are asking for a recommendation for approval of the waiver.~~
- 1.1.5 Show the required screening along Arterial Street and railroads: Add a note to the General Site Notes stating, "The required screening along the Arterial Street and railroads shall be shown with the Jensen Park Estates Final Plat."
- 1.1.9 ~~Show all lots meeting the 110' minimum lot depth requirement, unless subdivider's waiver request is approved by the City Council. Lot screening for Lots 1-5, Block 8, shall be screened so that 90% of the surface area of the vertical plane extending along the entire length of Lots 1-5, Block 8, from the ground elevation at the lot line to six (6) feet above the surface elevation of the street.~~

Thiellen stated that the applicant and staff have reached agreement on Condition #1.1.5 and #1.1.9.

The staff is opposed to waiving the street connection to the adjacent property required by Condition #1.1.1. Thiellen agreed that this is a requirement of the subdivision regulations; however, this requirement can be waived if there are any natural topographical features or manmade features prohibiting that connection. Thiellen showed the area on the map and pointed out that there are existing wetlands in this location which are difficult to cross and which would require mitigation and buffer requirements, etc. They did attempt to work out an agreement with the city to mitigate the wetlands off-site, but that attempt was not successful. Imposing this street connection will cause the applicant to lose lots with no gain. There is no potential gain in terms of providing the street connection. It is all at the cost to the applicant with no benefit. In addition, the applicant believes that there is limited development potential on the north lot. The shape and size of that parcel makes it difficult to project a street through and get lots on both sides of the road. This applicant considered purchasing the adjacent property but it would have required seven waivers.

Esseks asked the applicant to show the other connectivity coming out of this development. What over linkages do you have with present or future developments? Thiellen referred to the site plan showing circulation/access at both 84th Street and Yankee Hill Road. There is no access to the north or to the northeast because there is an existing railroad. Esseks inquired as to the current or projected land use to the northeast of the railroad right-of-way. Thiellen advised it to be commercial development and a substation. Directly north along 84th is currently an acreage. Jensen Park is to the south.

2. Bob Lewis with Jensen Park LLC, the developer and applicant, clarified that 84th Street is on the east side of the property, Yankee Hill Road is to the south, the new alignment of Yankee Hill Road will come around and tie into 91st Street, and they are bounded on the north by an existing railroad. The five-acre parcel directly north and south of the railroad is the parcel in question as far as making a street connection for future development. Hampton Development has been involved in hundreds of acres of development and thousands of lots in Lincoln and this is the first time they have come forward with a residential subdivision and asked for this waiver. The reason they are requesting the waiver is that it would require them to cross the wetlands to get to that 5.5 acre parcel, which also has a wetland. He does not believe there is enough developable land to justify putting a road at this location. Today, that parcel is a single family use with a driveway out to 84th Street. The applicant did contact the property owner to see if they had an interest in being part of this subdivision but did not get a response. It is difficult to justify running 200-300 ft. of road and utilities, and going back to the Corps of Engineers and revising the wetlands permit to serve a piece of ground that is about 3 acres without the wetlands, to gain maybe three or four lots.

With regard to Condition #1.1.9, Lewis clarified that they did agree with staff to maintain that lot depth at less than 110' and increase the landscape screening from 60% to 90% on those lots that do not meet that depth. This is because the Yankee Hill Road right-of-way was dedicated some time ago for the realignment. With the new subdivision requirements, staff wanted additional right-of-way. In lieu of taking property from the cemetery, they

shifted all of Yankee Hill Road to the north, which took more property from this developer. So staff agreed to reduce the lot depth so that they do not have to revise the plat.

Staff questions

Carroll asked staff to discuss the proposed amendments. Brian Will of Planning staff confirmed that the staff does agree with the changes to Conditions #1.1.5 and #1.1.9. However, the staff continues to object to waiving the street connection to the north in Condition #1.1.1. The staff understands the circumstances described by the applicant, but it also relates to spacing of driveway access points off 84th Street and proximity to the railroad crossing. He agreed that the subdivision ordinance does allow for exceptions under certain circumstances.

Dennis Bartels of Public Works agreed that it would be an expensive street crossing, but the property to the north is shown as residential in the Comprehensive Plan, and the only access would then be on 84th Street a relatively short distance from a railroad crossing. Train traffic could increase at any time. There is other wetlands mitigation on this property. It would be a lot easier for the city to say that the property should be developed residential if it had access back into this residential subdivision.

Bartels agreed that this is an awkward parcel because of the wetlands and the railroad, but eventually it is going to be developed. The concern is the fact that it is not connected may be used to justify some use of the land other than residential.

Esseks wondered if there is any history to guide the Commission on this waiver request? Bartels could not come up with a specific example, but the only access being a right-in, right-out driveway to 84th Street detracts from the commercial value as well. The status of the railroad crossing is unknown. If it is developed residential, we will want there to be full access to a median opening. Then they need street access back to the subdivision.

Esseks believes this five-acre parcel with the wetland is going to be isolated if the waiver is granted.

Ray Hill of Planning staff stated that there probably have been situations where access was not provided to adjacent property that did lead to a change of zoning to something different than what might have been shown in the Comprehensive Plan. The railroad line is not being used now because a contract between the power company and the railroad was cancelled; however, it could become active again.

Response by the Applicant

Lewis stated that they would not be requesting the waiver if this subdivision could abut lots directly to that parcel to the north. It becomes an issue because they have to cross the wetlands just to get to that property. Does a street connection guarantee that it is going to

be residential? He does not know.

Esseks believes the developer is taking a risk of creating an isolated parcel and those people will want preferential treatment. Esseks believes they would be better off trying to make use of the land to the north to protect the parcels that are right across the wetlands.

Lewis is confident that whatever use goes there will not be in conflict. The applicant did send letters to all of the neighbors with a site plan suggesting that they would be willing to meet with anyone who was interested. There were no responses. The owners of the north parcel were also contacted to inquire whether they were interested in participating or selling and there was no response.

ANNEXATION NO. 04012

ACTION BY PLANNING COMMISSION:

February 15, 2006

Esseks moved approval, subject to an Annexation Agreement, seconded by Carroll and carried 5-0: Esseks, Sunderman, Carroll, Taylor and Carlson voting 'yes'; Krieser, Strand and Larson absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04079

ACTION BY PLANNING COMMISSION:

February 15, 2006

Carroll moved approval, seconded by Esseks and carried 5-0: Esseks, Sunderman, Carroll, Taylor and Carlson voting 'yes'; Krieser, Strand and Larson absent. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 04030,

JENSEN PARK ESTATES.

ACTION BY PLANNING COMMISSION:

February 15, 2006

Esseks moved to approve the staff recommendation of conditional approval, with the amendments as requested by the applicant, seconded by Carroll.

Carroll stated that he does not like to isolate that lot, but looking at the topography, it is a very difficult lot. He does not want to have to fill the wetlands to build a road that might or might not be used in the future. He wishes the lot owner would have worked with the developer to be included to make a better design, but they chose not to. The topography alone tells you it is a difficult situation. He thinks the design is a good one. He does not like this, but at this point in time he thinks this should be approved without that street connection.

Esseks stated that he is persuaded by Carroll.

Carlson believes there is a need to look to the future. The proximity of the railroad tracks

makes it difficult. The right-in, right-out is an issue, but who is to say they won't come back and say they need a median opening? This is difficult. He is a big fan of connectivity. Even if they acquired the property to the north, they would still be impacting the wetlands.

Motion for conditional approval, with the amendments requested by the applicant, carried 5-0: Esseks, Sunderman, Carroll, Taylor and Carlson voting 'yes'; Krieser, Strand and Larson absent. This is final action on the preliminary plat, unless appealed to the City Council, except that the approval of the waiver of the street connection is a recommendation to the City Council due to the staff recommendation of denial.

CHANGE OF ZONE NO. 05052,
UNIVERSAL ADDITION PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND PIONEERS BOULEVARD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 15, 2006

Members present: Esseks, Sunderman, Carroll, Taylor and Carlson; Krieser, Strand and Larson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None

The Clerk announced a written request by the applicant for a two-week deferral for readvertising purposes.

Carroll moved deferral for two weeks, with continued hearing and action on March 1, 2006, seconded by Sunderman and carried 5-0: Esseks, Sunderman, Carroll, Taylor and Carlson voting 'yes'; Krieser, Strand and Larson absent.

There was no public testimony.

There being no further business, the meeting was adjourned at 3:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 1, 2006.